

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2281 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STEEL TUBES LIMITED

Versus

UNION OF INDIA

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Appearance:

MR PARESH M DAVE for Petitioners

MR PB MAJMUDAR for Respondent No. 1

MR JAYANT PATEL, for Respondent Nos. 2 & 3

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

Date of decision: 02/07/1999

ORAL JUDGEMENT [ PER; C.K. THAKKAR,J ]

Rule. Mr. Jayant Patel for Mr. P.B.Majmudar  
waives service for the respondents. In the facts and  
circumstances of the case, the matter is taken up for  
final hearing today.

This petition is for an appropriate writ,

direction and order for quashing and setting aside the orders passed by the appellate authority dated 17th March, 1999 on the Stay Order No. 381 of 1999 and dated 25th March 1999 on Misc. Order No. 11 of 1999.

It is an admitted fact that being aggrieved by the order-in-original, an appeal is filed by the petitioners. Along with the said appeal, an application for stay was also moved. An order passed on the Stay application is impugned in this petition.

Mr. Dave, learned counsel for the petitioner contended that there is a total non-application of mind on the part of the appellate authority in not considering the trade notice No. 62/CE/95 dated 28th November, 1995 issued by the Commissioner of Central Excise, Chandigarh. It was stated that even if necessary particulars which were required to be submittd were not submitted by M/s Steel Authority of India Limited ( SAIL ), the customer should not suffer and necessary particulars can be had from SAIL. Even though the above fact was brought to the notice of the appellate authority, there is no whisper about that fact or the trade notice in the stay order of the appellate authority. It was, therefore, submitted that the order deserves to be quashed and set aside. Mr. Dave submitted that this is eminently a fit case in which either the appellate authority may be directed not to insist on pre-deposit amount and decide the appeal on its own merits in accordance with law or to direct the appellate authority to afford personal hearing in view of peculiar facts and circumstances of the case and to pass appropriate order since this is a third round of litigation in which the petitioner have to approach this Court.

Mr. J.M.Patel, learned counsel for the respondents, on the other hand, submitted that ordinarily in exercise of extra-ordinary powers under Article 226 of the Constitution, this Court would not pass the order directing the appellate authority not to insist for pre-deposit of the amount which is a statutory requirement. Similarly, this Court would also not direct the appellate authority to afford personal hearing in the light of the law laid down by the Hon'ble Supreme Court in Union of India v/s M/s Jesus Sales Corporation, JT 1996(3) SC 597 and followed by the Division Bench of this Court in D.C.W. Limited & Ors. v/s Commissioner (Appeals) & Ors., 1997(2) GLR 913.

So far as non-consideration of trade notice is concerned, obviously there is non-consideration of the same as there is no mention in the stay order impugned in this petition. It also appears that this is a third round in which the petitioner has to approach this Court.

In these circumstances, it cannot be said that the grievance voiced by the petitioner against the appellate order is misconceived or totally ill-founded. In the facts and circumstances, however, we are of the opinion that it would be proper if we set aside the order passed by the appellate authority by directing him to reconsider the stay application and to pass reasoned order thereon. Regarding personal hearing, it may not be proper to direct the appellate authority to afford personal hearing in the light of the law laid down by the Hon'ble Supreme Court as well as by this Court, but the appellate authority will consider even that prayer and take appropriate course particularly when a grievance is made that attention of the appellate authority was invited to trade notice and yet no mention is made in the appellate order by him.

For the foregoing reasons, petition deserves to be allowed and is accordingly allowed. The orders dated 17th March 1999 on Stay Order No. 381 of 1999 and dated 25th March, 1999 on Misc. Order No. 11 of 1999 are hereby quashed and set aside and the matter is remanded to the appellate authority for fresh disposal in accordance with law. The authority will not dismiss the appeal during the pendency of the stay application on the ground of non-payment of pre-deposit amount.

Rule is made absolute to the above extent. No order as to costs.

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